

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MERCK & CIE, BAYER PHARMA AG and
BAYER HEALTHCARE
PHARMACEUTICALS INC.,

Plaintiffs,

v.

WATSON LABORATORIES, INC.,

Defendant.

C.A. No. 13-978 (RGA)

~~PROPOSED~~ FINAL JUDGMENT

The United States Court of Appeals for the Federal Circuit having issued its Mandate of July 29, 2016, upon its Opinion of May 13, 2016:

IT IS HEREBY ORDERED AND ADJUDGED this 18 day of August, 2016, for the reasons set forth in the Mandate and Opinion (D.I. 123) of the Court of Appeals for the Federal Circuit that:

1. Judgment is entered in favor of Defendant Watson Laboratories, Inc. ("Watson") and against Plaintiffs Merck & Cie, Bayer Pharma AG and Bayer HealthCare Pharmaceuticals Inc. (collectively "Plaintiffs") on the claim in Plaintiffs' complaint for Patent Infringement dated June 4, 2013 (D.I. 1). The commercial manufacture, use, offer for sale, sale, and/or importation into the United States of the proposed generic version of Bayer HealthCare's Safyral[®] combined oral contraceptive that is the subject of Watson's Abbreviated New Drug Application ("ANDA") No. 203594 would not infringe Claim 4 of U.S. Patent No. 6,441,168 ("the '168 patent"), because that claim is invalid.

2. Judgment is entered in favor of Watson and against Plaintiffs on the counterclaim of invalidity in Watson's Answer to Complaint, Defenses, and Counterclaims dated August 2, 2013 (D.I. 11). Specifically, that Claim 4 of the '168 patent is invalid for having been on sale in this country, more than one year prior to the date of application for the patent under 35 U.S.C. § 102(b).

3. The Court expressly reserves jurisdiction to hear and determine whether this case is "exceptional" within the meaning of 35 U.S.C. § 285, and to impose any available sanction or remedy under that section.

August 18, 2016
DATED

Richard G. Anderson
UNITED STATES DISTRICT JUDGE